

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

MARCIA L. SMITH

PLAINTIFF

VS.

CIVIL ACTION NO. 3:17CV450TSL-RHW

UNITED OF OMAHA LIFE INSURANCE  
COMPANY AND MUTUAL OF OMAHA  
INSURANCE COMPANY

DEFENDANTS

ORDER

This cause is before the court on the motion of plaintiff Marcia L. Smith for judgment as a matter of law. Defendants United of Omaha Life Insurance Company and Mutual of Omaha Insurance Company have responded in opposition to the motion.<sup>1</sup> The court finds that plaintiff's motion for judgment as a matter of law with accompanying supplement to the administrative record, is well-taken and should be granted.

Therefore, in accordance with the court's May 21, 2018 memorandum opinion and order and for the additional reasons set forth in plaintiff's motion for judgment as a matter of law, it is ordered that plaintiff's motion for judgment as a matter of law is granted.

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<sup>1</sup> Defendants do not dispute, and on the contrary have found, that plaintiff meets the plan definition of disabled. Defendants maintain, however, that contrary to the court's previous ruling, the preexisting condition exclusion applies and precludes plaintiff's right to recover under the policy. For that reason, they object to entry of final judgment in plaintiff's favor.

A separate final judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 4<sup>th</sup> day of October, 2018.

/s/ Tom S. Lee  
UNITED STATES DISTRICT JUDGE